

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1007 Misc.

JOHN WILLIAM BUTENKO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 885

IGOR A. IVANOV, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM IN RESPONSE TO MOTION TO AMEND THE PETITION FOR CERTIORARI

Petitioner Ivanov has submitted a motion to amend the petition for a writ of certiorari to add a question concerning the government's possession of recordings of the voice of any defendant or codefendant. In our brief in opposition in these cases we advised the Court (with regard to electronic surveillance) that "it has been determined that there is

nothing to disclose pursuant to the policy of the Department of Justice as described to this Court in the government's memorandum opposing rehearing recently filed in *Kolod et al. v. United States*, No. 133." In light of the Court's subsequent order in *Kolod*, however, we agree that the instant cases should be remanded to the district court.

In the Motion to Modify the Order of the Court which we have submitted in *Kolod, et al. v. United States*, No. 133, we have set forth the reasons and authority which we believe support the view that this Court's order remanding that case should provide that the records of electronic surveillance be submitted for an *in camera* inspection to the district judge, who may then order any further proceedings which he finds warranted.

This case arises from an investigation affecting the national security. Here, it cannot be doubted that public disclosure of the materials involved "might reveal the inner workings of the investigative process and thereby injure the national interest." *Palermo v. United States*, 360 U.S. 343, 350. See, also the concurring opinion of Mr. Justice White in *Katz v. United States*, No. 35, decided December 18, 1967. The obvious public interest in preventing the unnecessary disclosure of such material provides additional support for the adoption of the procedures suggested in our Motion in *Kolod*.

In the circumstances, we believe the Court should grant certiorari, vacate the judgment below, and remand the cases to the district court with instructions

to conduct an *in camera* inspection of the fruits of any electronic eavesdropping to determine the necessity of compelling the government to make disclosure of those materials to the defendants.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1968.